

## CONFIDENTIALITY AGREEMENT

**Asset Pool Number(s): SPB-2-03-066, SPB-2-03-090, SPB-2-03-099, SPB-2-03-100, SPB-2-03-200, SPB-2-03-300, SPB-2-03-400, SPB-2-03-500, SPB-2-03-600, SPB-2-03-700**

THIS CONFIDENTIALITY AGREEMENT ("Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 2003, by and between the Federal Deposit Insurance Corporation in its capacity as Receiver of Southern Pacific Bank ("FDIC"), and \_\_\_\_\_, a \_\_\_\_\_ ("Bidder").

WHEREAS the FDIC is offering for sale by competitive sealed bid certain pools of assets ("Assets") of Southern Pacific Bank ("SPB"), and in connection therewith, the FDIC is distributing or otherwise making available to prospective bidders a package of materials ("Bid Package"), including, among other things, a form of Asset Sale Agreement (the "ASA").

WHEREAS, Bidder has requested that FDIC provide Bidder with certain documents and/or other information relating to the Assets for review.

WHEREAS, in consideration of the FDIC's furnishing Bidder with such information regarding the Assets, Bidder desires to make certain agreements regarding such information and any other information the FDIC, its agents and representatives furnish to Bidder regarding the Assets, together with all notes, analyses, compilations, studies or other documents, whether prepared by Bidder or others, which contain or otherwise reflect such information (such information, and such documents, are collectively herein referred to as the "Evaluation Material").

NOW, THEREFORE, in consideration of the promises and mutual covenants set forth below, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, FDIC and Bidder enter into this Agreement:

Section 1. Term. This Agreement shall become effective as of the date set forth above and shall terminate only with respect to Assets purchased by Bidder pursuant to the offering described in the Bid Package ("Offering"), and only upon closing on the purchase of such Assets and the expiration of any and all repurchase options that may be provided for pursuant to the ASA.

Section 2. Limitation on Use. Bidder shall use the Evaluation Material solely for the purpose of evaluating the Assets offered for sale by the FDIC.

Section 3. Limitation on Further Due Diligence. Bidder shall not contact or attempt to contact any borrower or guarantor under any Asset in the Offering or any of their respective officers, employees, agents or attorneys, except as follows:

- (a) Prior to initiating any contact with such individual or entity, Bidder obtains the written consent of the FDIC, which consent may be withheld in the FDIC's sole discretion.
- (b) Bidder has an ongoing business relationship with such individual or entity or under an Asset which relationship pre-dates the Bid Package under which the borrower's Asset is offered, and Bidder's communications with such individual or entity (i) are limited to usual and customary communications with respect to the ongoing relationship and (ii) do not involve information relating to the Offering.
- (c) Any such individual or entity initiates contact with Bidder to establish a business relationship, including the refinancing of any Asset, provided Bidder's communications with such individual or entity do not involve information relating to the Offering.

Section 4. Limited Access. Without the prior, written consent of the FDIC, to be granted or withheld in its sole discretion, Bidder shall not disseminate or divulge the Evaluation Material to any individual or entity, other than to: (a) its employees, officers and directors (including those of its affiliates), (b) its agents and representatives (including its attorneys, accountants and financial advisors) and (c) any third parties (such as equity investors, servicers and contractors), in each case who (i) have a need for access to the Evaluation Material for the purpose of assisting and advising Bidder in the evaluation of the Assets or making a bid therefor, and (ii) have entered into an agreement with Bidder substantially in the form of this Agreement, a copy of which executed agreement will be provided upon request to the FDIC, or that are otherwise obligated under the terms of their engagement or relationship with Bidder to maintain the confidentiality of the Evaluation Material.

Section 5. Confidentiality; Destruction of Documents. Bidder agrees that Bidder shall ensure that all individuals or entities to whom it discloses the Evaluation Material shall keep the Evaluation Material confidential. With respect to any Assets not purchased by Bidder pursuant to the Offering, Bidder shall destroy, and shall ensure that all individuals or entities to whom it has disclosed the Evaluation Material shall destroy all copies of the Evaluation Material, unless otherwise directed by the FDIC, unless doing so would violate: (a) legitimate record-keeping requirements mandated by applicable law or regulation, or (b) internal Bidder record maintenance policies and controls. Any Evaluation Material not destroyed because of subsections (a) or (b) of this Section 5 shall remain confidential and subject to this Agreement. Bidder will inform the FDIC immediately of any improper disclosure of any of the Evaluation Material, and of any breach of any provision of this Agreement, which may come to Bidder's attention.

Section 6. Other Disclosure. To the extent that Bidder is required to disclose the Evaluation Material pursuant to the requirements of any legal proceeding, Bidder shall notify FDIC within one Business Day<sup>1</sup> of its knowledge of such legally required disclosure so that FDIC may seek an appropriate protective order and/or waive Bidder's compliance with this Agreement. Notice shall be both by telephone and in writing. In the absence of a protective order or waiver, Bidder may disclose the relevant Evaluation Material if, in the written opinion of its counsel, failure to disclose such Evaluation Material would subject Bidder to liability for contempt, censure or other legal penalty or liability.

Section 7. Liability. If FDIC determines that Bidder has breached any provision of this Agreement, FDIC may, in its sole discretion, exercise any or all legal or equitable rights or remedies to which FDIC is entitled on account of Bidder's breach. FDIC shall not be deemed to have waived any of its rights or remedies on account of its failure, delay or forbearance in exercising any such right or remedy in a particular instance.

Section 8. Indemnification. Bidder shall defend, indemnify and hold harmless FDIC from and against any and all claims, demands, causes of action, losses, damages, liabilities, judgments, costs and expenses (including attorneys' fees) asserted against or incurred by FDIC as a result of any violation of, or failure to comply with, the provisions of this Agreement by Bidder or any person to whom it has disclosed the Evaluation Material.

Section 9. Release of FDIC. Bidder acknowledges and understands that some or all of the Evaluation Material may have been prepared by parties other than FDIC, and further acknowledges and understands that FDIC makes no representation or warranty whatsoever, express or implied, with respect to the content, completeness or accuracy of the Evaluation Material. Bidder hereby releases FDIC from all claims, demands, causes of action, losses, damages, liabilities, cost or expenses (including attorneys' fees) asserted against or incurred by Bidder by reason of Bidder's reliance on or knowledge of the Evaluation Material or by any other reason.

Section 10. Miscellaneous. Notwithstanding anything to the contrary set out above, nothing in this Agreement shall prevent Bidder from using or disseminating information which is available to the general public. This Agreement represents the entire agreement between Bidder and FDIC relating to the receipt, use and disclosure of the Evaluation Material, and may be amended only by written agreement of the parties hereto.

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<sup>1</sup> A "Business Day" means any day other than a Saturday, Sunday or United States federal legal holiday.

All capitalized terms not otherwise defined herein shall have the meanings set forth in the ASA. This Agreement shall apply to and be binding upon Bidder and its directors, officers, employees, agents, successors and assigns. The representative(s) signing this Agreement on behalf of Bidder represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to bind legally Bidder. Federal law shall control this Agreement. To the extent that federal law does not supply a rule of decision, this Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of New York. Nothing in this Agreement will require any unlawful action or inaction by either party.

**FEDERAL DEPOSIT INSURANCE  
CORPORATION AS RECEIVER OF  
SOUTHERN PACIFIC BANK**

\_\_\_\_\_  
WITNESS

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Attorney in Fact

**BIDDER:**

\_\_\_\_\_,

a \_\_\_\_\_

\_\_\_\_\_  
WITNESS

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address of Bidder:

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\_\_\_\_\_

\_\_\_\_\_  
Contact Person

( ) \_\_\_\_\_  
Telephone Number of Contact Person

( ) \_\_\_\_\_  
Fax Number of Contact Person

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E-mail Address